

## REMARKS

This responds to the Final Office Action dated **April 24, 2007**.

In the Office Action, claims 1-8 and 10-23 are noted as pending in the application, claims 1-8 and 10-23 stand rejected, no claims are objected to and no claims are allowed. Claims 24-28 have been withdrawn from consideration.

In the Office Action, claims 1-3, 6-8, 10 and 13 stand rejected for anticipation. Because these claims are believed not to be anticipated, Applicant requested a telephone interview to discuss *Phalin* and the anticipation rejection. Based on the telephone interview discussion, it is believed that the following amendments place the claims in a condition for allowance. Consideration of the claims after Final is respectfully requested.

### Examiner Telephone Interview

Applicant appreciates the time and consideration given to the application by the Examiner during the Telephone Interview. Applicant also appreciates the Examiner's comments regarding the prior art and the claims.

### Election/Restriction

Applicant notes that added claims 24-28 are withdrawn from consideration as being directed to a non-elected invention.

### Rejections

Claims 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. They are also rejected under 35 U.S.C. 112, second paragraph. According to the Office Action, the limitation in claim 21 reciting that "the upper position is greater than or equal to about one-half inch and less than two inches" is not described in or supported by the original disclosure. This rejection is addressed below in the context of Applicant's original disclosure.

Claims 1-3, 6-8, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by *Phalin* (4,405,058). Claims 4, 5, 11, 12 and 14-18 are rejected under 35

U.S.C. 103(a) as being unpatentable over *Phalin*. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Phalin* in view of *Sugiyama et al.* (JP 03243231 A, October 30, 1991). Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Biggins* (4,042,143) in view of *Phalin* and *Sugiyama et al.* Claims 21 -23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Phalin*. These rejections are respectfully traversed.

#### Applicant's Disclosure

Applicant's disclosure has been discussed previously. However, and in view of the new matter rejections, examples of structures from the application as originally filed are discussed below to provide the support for the recitations of claims 21-23. While the specification includes examples other than those described below, these examples below are specifically directed only to the recitations of claims 21-23 forming the rejections under 35 U.S.C. 112.

Claims 21-23 are rejected as being unsupported by the original application as filed, under 35 U.S.C. 112, first paragraph. According to the Office Action, the limitation "the upper position is greater than or equal to about one-half inch and less than two inches" is not described in or supported by the original disclosure. The same rejection is also made under 35 U.S.C. 112, second paragraph.

The original disclosure supports claims 21-23. By way of background, the support for the claim language will be established in part by reference to the relative dimensions of the container outer wall and the raised portion, in one example a dome. For example, original claims 9-12 elaborate on the relative sizes of the side wall and the raised portion, and the reference in claim 21 to "two inches" will be discussed in part based on the height of the raised portion relative to the outer wall.

The claims are supported by original claims 4-5 and 9-12, and by the original specification, for example paragraph 0021. Specifically, that "the upper position is greater than or equal to about one-half inch" is established by original claim 4. Original claim 4 states that "the raised portion extends upward to a top-most portion of the raised portion at a center of the receptacle and wherein the first distance from the recessed

portion to the top-most portion is greater than approximately 1/2 inch". Therefore, the lower number in claim 21 is shown by original claim 4.

Furthermore, the height of the raised portion can be established in several examples by reference to the dimensions relative to the outer wall. Paragraph 0021 states that the height of the outer wall is at least 1/4 inch and could be 2 inches. Original claim 12 recites the height is "about" 2 inches. Therefore, an exemplary range for the outer wall is established from 1/4 inch to 2 inches. The discussion below uses these exemplary dimensions for the height of the outer wall to establish example dimensions for the raised portion.

Claim 9 establishes an example that the dome height is less than the outer wall height. Where the outer wall height is about 2 inches, as noted in one example in the preceding paragraph, and the claim 9 raised portion is less than the outer wall, then the raised portion is less than 2 inches. Likewise, where the outer wall height is about 1/4 inch, as noted in one example in the preceding paragraph, then the raised portion can be less than 1/4 inch. Therefore, claim 9 in combination with the exemplary range for the outer wall established above gives an exemplary range for the dome of less than 1/4 inch to less than approximately 2 inches. Therefore, a possible example of an upper dimension for the dome height is less than approximately 2 inches.

In view of the foregoing, an exemplary range for the dome height includes the approximately 1/2 inch to less than two inches recited in claims 21-23. Therefore, claims 21-23 are supported by the original specification.

#### Cited Prior Art

In the interests of progressing prosecution and without prejudice to pursuing the unamended claims another time, several of the claims have been amended to further distinguish over the prior art. As noted by the Examiner in the Examiner Interview Summary Record, Applicant believes that there is no teaching or suggestion in *Phalin* to combine *Phalin* with any of its prior art to provide a receptacle having an opening with a maximum opening dimension greater than the height of a raised portion from a recessed portion in the receptacle. Taking *Phalin* and its teachings and what one

skilled in the art would understand from the prior art as a whole, which is required for an obviousness rejection, there is no teaching or suggestion that anyone would combine the *Phalin* bottom profile in a beverage container that is wider than it is tall. [As noted in MPEP § 2141.02(VI), "a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." *Citations omitted, emphasis in original.*] *Phalin* specifically states that the intended goal is to make containers taller than they are wide, which leads away from using the *Phalin* bottom configuration being used with containers wider than tall.

Additionally, there is no teaching or suggestion in *Phalin* or the prior art with which it could be combined to provide the *Phalin* container with the relative dimensions or spacing set out in the present claims. Specifically, *Phalin* is expressly directed to containers taller than they are wide. Additionally, the relative dimensions of *Phalin* having an approximately four inch height and three inch diameter necessarily means that nobody skilled in the art would consider the *Phalin* configuration for use in containers for rimming drink ware. Rimming drink ware means reasonable accessibility to the contents of the container. *Phalin* would not be configured to be used for rimming drink ware.

Given the *Phalin* prior art and containers that are higher than they are wide, there is no teaching or suggestion that one skilled in the art would make a wider, lower container having a rounded bottom. Specifically, *Phalin* states that "it has long been desired to be able to make a container whose height is appreciably greater than the diameter . . . ." [See, column 1, lines 56-58.] Therefore, one skilled in the art, taking *Phalin* as a whole, would understand that the teachings of *Phalin* would apply to containers taller than they are wide, and there is no teaching or suggestion that the *Phalin* configuration would be used in a wider than high container.

Additionally, it is important to *Phalin* to produce a container having "a relatively uniform side wall of a minimum thickness necessary to prevent paneling and crushing of the pack container." [See, column 2, lines 60-63.] As a result, one skilled in the art would not consider, without undue experimentation, that the bottom configuration of *Phalin* would be used in a wider, shorter container and not be subject to paneling or

crushing. Therefore, nothing in the relevant prior art would teach or suggest wider than high containers having the raised bottom configurations of the present inventions.

*Sugiyama* is directed to a drawn container as is *Phalin* higher than it is wide. The inside of the container has a raised portion having an upper surface less than half the height of the container. *Sugiyama* suffers the same defects as *Phalin*.

*Biggins* is also directed to a container that is higher than it is wide. Additionally, *Biggins* has a raised bottom portion. *Biggins* suffers the same defects as *Phalin*. Moreover, there is no teaching or suggestion that one skilled in the art would combine *Phalin*, *Sugiyama* and *Biggins* for any reason. *Biggins* is directed to a double seal container for foods where a removable snap-fitting lid closes the receptacle opening and forms an airtight seal for the container. The seal plug wedges into the container also for sealing the container. The *Phalin* reference does not appear to mention sealing the top, but it is believed that its top is sealed with a seam, and bottoms of similar containers can also be sealed with seams. One skilled in the art would not combine *Biggins* with either *Phalin* or *Sugiyama*.

It is respectfully submitted that none of the references, taken singly or in combination, teach or suggest the present inventions as claimed.

### Claims

Consider now the claims in the application.

Claim 1 is an independent apparatus claim and recites in part:

“a raised portion having a convex shape and connected to the interior area of the recessed portion extending upward and toward the center of the receptacle a first distance wherein the raised portion is substantially circular and has an outer diameter between approximately two inches and approximately six inches; and

“an outer wall portion connected to the exterior area and extending at least partly upwardly a second distance greater than the first distance to a rim forming

an opening that has a maximum opening dimension greater than the second distance."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or wherein the raised portion has an outer diameter between approximately two inches and approximately six inches and an outer wall portion extending at least partly upwardly a second distance greater than the first distance to a rim forming an opening that has a maximum opening dimension greater than the second distance. *Phalin* does not teach or suggest an apparatus having the claimed elements. There still is no anticipation. *Phalin* is a container taller than it is wide, and *Phalin* taken as a whole teaches that *Phalin*-type containers are taller than they are wide. *Phalin* leads away from the claimed invention. While *Phalin* states that a wide commercial range of can sizes is possible [column 4, lines 67-68], the stated goal is to make a container whose height is appreciably greater than the diameter. Therefore, one skilled in the art, and taking the art as a whole, including where the art leads away from the claimed inventions, would not use *Phalin* to produce a container having the claimed features. Clearly claim 1 is patentable over *Phalin* and the other references of record.

The claims 2-8 and 10-13 are dependent directly or indirectly from independent claim 1 and are asserted as being patentable for the same reasons as discussed with respect to claim 1, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note for example claim 4 which recites in part "wherein the raised portion extends upward to a top-most portion of the raised portion at a center of the receptacle and wherein the first distance from the recessed portion to the top-most portion is greater than approximately 1/2 inch". Note also claim 5, dependent from claim 4, reciting in part "wherein the first distance is approximately three quarter inch". Note also claim 11 reciting in part "wherein the second distance is approximately twice the first distance". None of the references teach or suggest the second distance approximately twice the first distance in combination with the elements of claim 1. Additionally, claim 12 has been amended to incorporate

all of the limitations of claim 1 prior to the present amendment and recites that "wherein the second distance is approximately two inches". Nothing in *Phalin* teaches or suggests an approximately two inch high outer wall container with an opening wider than the container is tall.

Claim 14 is an independent apparatus claim and recites in part:

"a closed body portion having an upper rim defining an opening into the receptacle, an outer wall portion extending downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter and 2 inches, the base portion having a substantially flat surface facing upwardly toward the opening and extending inwardly toward a center from the outer wall portion to a raised portion, wherein the base portion is configured to support a granular material and sized sufficiently to receive an open rim of a beverage container, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance, and wherein the raised portion is configured to allow a granular material to move under the force of gravity toward the base portion."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an outer wall portion extending downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter and 2 inches, the base portion extending inwardly toward a center from the outer wall portion to a raised portion, wherein the base portion is configured to support a granular material and sized sufficiently to receive an open rim of a beverage container, and wherein the raised portion has a vertical height approximately half the first distance. None of the references taken singly or in combination teach or suggest a body portion suitable for supporting granular material and for allowing the granular material to move toward the base portion where the raised portion has a vertical height approximately half the first distance of the outer wall

portion. One skilled in the art of rimming dishes would not look to *Phalin* or *Sugiyama* or *Biggins* to arrive at the claimed invention, and those references do not teach or suggest a body portion having an outer wall between one-quarter and 2 inches high and having a raised portion with a vertical height approximately half the first distance of an outer wall portion.

Claims 15-18 are dependent directly or indirectly from independent claim 14 and are asserted as being patentable for the same reasons as discussed with respect to claim 14, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims.

Claim 19 is an independent apparatus claim and recites in part:

"a round container having an upper rim defining an opening into the container, an outer wall portion extending vertically downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter inch and 2 inches, the base portion having a substantially flat surface facing upwardly toward the opening and extending inwardly toward a center from the outer wall portion to a raised portion, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance; and

"a round rimming dish sized to fit at least partly within the round container, the dish having a recessed area for receiving a coating material for coating a rim of a drink ware, and also having a raised area in the dish sized sufficiently to allow manual grasping of the raised area."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an outer wall portion extending vertically downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter inch and 2 inches, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward



a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance with a round rimming dish sized to fit at least partly within the round container. None of the references taken singly or in combination teach wherein the first distance is between one-quarter inch and two inches and wherein the raised portion has a vertical height approximately half the first distance. Therefore, for example, if the first distance is one-quarter inch, none of the references teach a raised portion of 1/8 of inch. Additionally, if the first distance is two inches, none of the references teach a raised portion of one inch. Moreover, none of the references teach or suggest, taken singly or in combination, the claimed round container with a round rimming dish as recited.

Claim 20 is dependent directly or indirectly from independent claim 19 and is asserted as being patentable for the same reasons as discussed with respect to claim 19, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claim.

Claim 21 is an independent apparatus claim and recites in part:

"a receptacle wall extending upwardly from a bottom portion of the receptacle wall to a rim, wherein the rim defines an opening having a size sufficient to receive the open rim of an item of drink ware and wherein the rim has an upper surface;

"a bottom wall joining the receptacle wall at the bottom portion of the receptacle wall, the bottom wall having a relatively flat section adjacent the receptacle wall and a raised portion interior to the relatively flat section and wherein the raised portion extends upward to an upper position above the relatively flat section and below the rim wherein the upper position is greater than or equal to about one-half inch and less than two inches."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or a receptacle wall extending upwardly from a bottom portion of the receptacle wall to a rim, wherein the rim defines

an opening having a size sufficient to receive the open rim of an item of drink ware, the bottom wall having a relatively flat section adjacent the receptacle wall and a raised portion interior to the relatively flat section and wherein the raised portion extends upward to an upper position above the relatively flat section and below the rim wherein the upper position is greater than or equal to about one-half inch and less than two inches. As noted above, the elements of claim 21 are supported in the original disclosure. Additionally, none of the prior art teaches or suggests when taken singly or in combination a raised portion having an upper position greater than or equal to about 1/2 inch and less than two inches. None of the prior art is concerned with migrating spice or other granular material outward to a recessed area while also allowing access without interference for drink ware into the container for rimming the drink ware. Therefore, the prior art does not teach or suggest to one skilled in the art the claimed invention.

The claims 22-23 are dependent directly or indirectly from independent claim 21 and are asserted as being patentable for the same reasons as discussed with respect to claim 21, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note also claim 22 reciting in part "wherein the upper position is about one-half inch". As noted above, the elements of claim 22 are supported in the original disclosure. A container having an upper position of about 1/2 inch would not be obvious in view of the prior art because the prior art is not concerned with permitting access to the bottom of the container for rimming drink ware without interference from the dimensions of the raised portion.

Reconsideration of the application and claims in view of the foregoing amendments and remarks is respectfully requested. Early notice of allowance thereof is earnestly solicited.

This response is being filed with a One-Month Extension of Time.

Application No.: 10/797,401  
Amendment dated: August 24, 2007  
Reply to Final Office Action of: **April 24, 2007**  
Atty. Ref.: 501120-014

Please charge any additional fees that may be due or credit any overpayments to our deposit Account No. 50-0655. If a petition is required in conjunction with this paper, please consider this a request for such a petition.

Respectfully submitted,

Dated: August 24, 2007

/James A. Henricks/  
James A. Henricks  
Registration No. 31,168

**HENRICKS, SLAVIN & HOLMES LLP**  
840 Apollo Street, Suite 200  
El Segundo, CA 90245-4737  
310-563-1456  
310-563-1460 (fax)  
[jhenricks@hsh-iplaw.com](mailto:jhenricks@hsh-iplaw.com) (Email)